

**FAIR EMPLOYMENT & HOUSING COMMISSION**

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## MINUTES 487th COMMISSION MEETING

April 7, 2011

Hiram Johnson State Building  
455 Golden Gate Avenue  
Santa Barbara Room, Lower Level  
San Francisco, California

***PRESENT:***

Chairman George Woolverton, Vice-Chair Patricia Perez; Commissioners Stuart Leviton, Linda Ng and Kristina Raspe; Commission staff Ann Noel, Joan Herrington, Caroline Hunt and Cynthia Jones and Volunteer Attorney Yeerik Moy, and Commission Law Student Extern Allie Polatin; Deputy Attorney General Nancy Beninati; and members of the public: Gretchen Andrews; Robbie Gonzalez-Dow; Lindsey Scott-Florez; Grace Yee; and Susan Skamser.

***OPEN SESSION***

***REVIEW OF AGENDA***

Chairman George Woolverton moved, Commissioner Kristina Raspe seconded, and the Commission voted 5:0 to open the meeting at 9:40 a.m. and to accept the Agenda. [11-12]

***REVIEW OF THE MINUTES***

Chairman George Woolverton moved, Commissioner Kristina Raspe seconded, and the Commission voted 5:0 to adopt the Minutes and Transactions of the 486th Commission meeting. [11-13]

The Commission entered Closed Session at 9:42 a.m.

***CLOSED SESSION (9:42 a.m.)***

Only the Commissioners and Commission staff were present. The Commission discussed writs, hearings and litigation and deliberated on pending cases.

a. Writs and Appeals

(1) DFEH v. Terra Linda Farms (Santillian/Rivas)

ELAS Noel announced that appellant Terra Linda Farms' closing brief is due April 25, 2011 after which the matter will be set for oral argument.

b. Post-Decision

(1) DFEH v. City of Merced (Staiger)

(2) DFEH v. Empower Telefundraising (Clare)

Administrative Law Judge Caroline Hunt reported that the Commission had received a Motion for Reconsideration in this matter from respondents and, on behalf of the Commission, Vice Chair Patti Perez denied the Motion.

(3) DFEH v. Belfort Arms Apts. (DeSantis)

c. Administrative Adjudication: Pending Decisions, Hearings Completed

(1) DFEH v. Acme Electric (Wideman)

(2) DFEH v. Air Canada (Zemaitis) 9:45 a.m.

Chairman George Woolverton recused himself and left the room. Administrative Law Judge Ann Noel also left the room.

Vice-Chair Patti Perez moved, Commissioner Kristina Raspe seconded, and the Commission voted 3-1 to adopt the proposed decision. [11-14]

Vice-Chair Patti Perez moved, Commissioner Linda Ng seconded and the Commission voted 3 to 1 to make the decision precedential. [11-15]  
Commissioner Stuart Leviton will write a dissent.

(3) DFEH v. U.P.S. (Mason) 10:35 a.m.

Chairman Woolverton and ALJ Ann Noel reentered the room. Administrative Law Judge Caroline Hunt left the room.

Chairman George Woolverton moved, Commissioner Kristina Raspe seconded, and the Commission voted 4 to 1 to adopt the proposed decision. [11-16]  
Commissioner Stuart Leviton will write a concurrence and a dissent.

The Commission took a break at 11:03 a.m.

(4) DFEH v. Trudy's Inc. (Campagna) 11:12 a.m.

Administrative Law Judge Joan Herrington left the room. Chairman George Woolverton moved, Commissioner Linda Ng seconded, and the Commission voted 5:0 to adopt the proposed decision. [11-17]

Chairman George Woolverton moved, Commissioner Linda Ng seconded and the Commission voted 5:0 to end Closed Session and enter Open Session at 11:28 a.m. [11-18]

### **REGULATIONS (10:10 a.m.)**

ELAS Noel reported on the current status of the Commission's regulatory projects in the areas of pregnancy, disability and other rulemaking changes. Commissioners are working with staff on each regulatory project.

**Pregnancy Regulations:** The Commission discussed ways to streamline, clarify and make consistent its pregnancy, disability and family leave regulations. The Commission is coordinating its work in the pregnancy regulations regarding notice and medical certifications with rulemaking projects on disability and family leave. The Commission welcomed members of the public Robbie Gonzalez-Dow, Gretchen Andrews and Grace Yee from the California Breastfeeding Coalition (CBC) who thanked the Commission for adding lactation to the list of "related medical conditions" in the Commission's pregnancy regulations. The CBC would like the Commission to require employers to inform their employees that they have a right to be reasonably accommodated so that they have time and a place to breastfeed.

### **Disability Regulations**

ELAS Noel told the Commission that Commissioners Patti Perez and Stuart Leviton and ELAS Noel will meet for three hours on Friday, first with employer representatives and then with employee representatives to get feedback on the Commission's disability regulations.

### **Request to Amend Cal. Code Regs., tit. 2, § 7287.4(d) – Criminal Records**

ELAS Noel reported that staff is researching the request made by the East Bay Community Law Center's Clean Slate Practice, requested that the Commission amend FEHA regulation California Code of Regulations, title 2, section 7287.4, subdivision (d)(1)(B), regarding employer's inquiries about an applicant's criminal records, to reflect changes in the law, which now allow for expungement of criminal records for felonies, misdemeanors and non-vehicular infractions. Noel stated that whatever change is required will require full rulemaking, rather than the more streamlined "Section 100" suggested at the February 2, 2011 meeting as a method for making this regulatory change.

**ATTORNEY GENERAL'S REPORT (11:54 a.m.)**

Deputy Attorney General Nancy Beninati reported that the Attorney General has filed a lawsuit against two companies that have scammed Los Angeles area African American churches with kiosks that were represented to make the churches money but instead cost the churches thousands of dollars. The Attorney General conducted a year-long investigation. The scam was perpetrated against churches nationwide.

The new Attorney General Kamala Harris conducted a "Smart on Crime" panel on March 16, 2011 where the AG took recommendations from a number of different sections within the Department of Justice to discuss what areas to focus DOJ resources. Among the topics discussed were bullying, the standing of the litigants in the Proposition 8 challenge, the underground economy, and other more traditional civil rights issues. Attorney General Harris has not yet set her agenda.

The Commission took a lunch break at 12:10 p.m.

**COMMISSIONERS' REPORTS (12:40 p.m.)**

Commissioner Linda Ng reported that she is working on organizing a Minority Business Conference to be held in September. ELAS Noel stated that she is working with Commissioner Ng to create the content for an "Employment Law 101" for conference participants, to involve all Commissioners and FEHC legal staff.

Commissioner Raspe reported that she met with new State and Consumer Services Agency Secretary Anna Caballero in both her professional U.S.C. capacity and as a Commissioner. The meeting went well and they discussed a study on housing instability having a direct effect on children's development.

Chairman George Woolverton reported that he and ELAS Noel would be organizing, with other Commissioners' and staffs' participation a seminar on disability and workers' compensation issues.

Commissioner Stuart Leviton suggested a study to determine how well the A.B. 1825 sexual harassment training regulations are working to deter sexual harassment.

Vice Chair Patti Perez would like to hold a conference with psychiatrists and psychologists to examine psychological profiles of harassment and discrimination victims. Perez has noticed that most workplace harassment victims that she encounters have preexisting difficulties in interacting with men. Perez also notified the Commission that she and ELAS Noel authored an article on disability to appear in the May 2011 CEB Business Practitioner. In addition, Perez and Noel have organized a four part "Brown Bag Series" of seminars on disability issues for the Labor and Employment section of the State Bar.

**EXECUTIVE AND LEGAL AFFAIRS SECRETARY'S (ELAS) ACTIVITY REPORT**  
**(12:50 p.m.)**

ELAS Noel talked further about the Sacramento Minority Business Conference. She suggested that the Commission and staff work to address common concerns and problems faced by small businesses in complying with the FEHA. She suggested that the Commission focus on four areas: harassment, disability, leave issues and when an employer gets sued. She urged Commissioner Ng and the others to discuss with others what common concerns they have heard employers face and discuss this further at the next meeting. Noel stated that she would return at the next meeting with a proposed agenda for the September conference. The Commission will coordinate the timing of this conference with its September 22 Commission meeting.

ELAS Noel also discussed holding a joint FEHC-DFEH reception to welcome Secretary Caballero, to be held after the next Commission meeting, May 26, in Sacramento. The Commission will hold the event at the Leland Stanford Museum (the old Governor's mansion) and invite the Governor, members of the Legislature, employer and employee representatives, and members of the civil rights community.

ELAS Noel directed the Commissioners' attention to her Activity Report for other items.

**LEGISLATION**

ELAS Noel stated that she would be making a presentation at the next meeting regarding four bills currently introduced in the Legislature covering the issue of student bullying. She will also discuss other bills which specifically amend the FEHA.

**PUBLIC COMMENTS (1:00 p.m.)**

There were no further public comments.

**ADJOURNMENT**

Chairman George Woolverton moved, Commissioner Raspe seconded, and the Commission voted 5:0 to adjourn the meeting. [11-18]

The Commission adjourned its meeting at 1:05 p.m.

Date: April 7, 2011

GEORGE WOOLVERTON  
Chairman

ANN M. NOEL  
Executive and Legal Affairs Secretary

**REPORT OF TRANSACTIONS  
OF THE 487th COMMISSION MEETING  
April 7, 2011  
San Francisco, California**

THE COMMISSION AT THIS MEETING TOOK THE FOLLOWING ACTIONS:

- 11-12 Voted 5:0 to call the meeting to order and to approve the Agenda.
- 11-13 Voted 5:0 to adopt the Minutes and Transactions of the 486th Commission meeting.
- 11-14 Voted 3:1 to adopt the proposed decision in DFEH v. Air Canada (Zemaitis).  
Chairman George Woolverton recused himself from this decision. Commissioner Stuart Leviton dissented.
- 11-15 Voted 3:1 to make its decision in DFEH v. Air Canada (Zemaitis) precedential.
- 11-16 Voted 4:1 to adopt the Proposed Decision in DFEH v. U.P.S. (Mason).  
Commissioner Stuart Leviton concurred and dissented.
- 11-17 Voted 5:0 to adopt the proposed decision in DFEH v. Trudy's Brides (Campagna).
- 11-18 Voted 5:0 to adjourn the meeting.

Prepared By

Ann M. Noel  
Executive and Legal Affairs Secretary

The Commission appends to its 487th Meeting Minutes the following report from Department of Fair Employment and Housing Chief Deputy Director Annmarie Billotti prepared for the Commissioners for this meeting.

\* \* \* \* \*

The Department of Fair Employment and Housing (DFEH or Department) will focus on two significant interrelated projects:

1. Commencing claims processing on its multi-million dollar, California Family Rights Act (CFRA) class action settlement against Verizon; and
2. Launching the DFEH-UC Irvine Law School Civil Rights Clinic.

#### DFEH v. Verizon Claims Processing

Following a preliminary hearing, on November 23, 2010, Los Angeles Superior Court Judge Anthony J. Mohr approved a \$6,011,190 settlement in *Dept. Fair Empl. & Hous. v. Verizon* (Seales) (Super. Ct. L.A. County, 2010, No. BC444066) (*Verizon*) for current and former Verizon employees in California to settle a class action lawsuit the DFEH filed challenging the company's family medical leave practices. The settlement covers Verizon's voice, data and video operations in California. This is the largest settlement in the history of the Department.

The class claims filing period closed on February 15, 2011. There are 966 valid claims and 38 valid opt outs filed by Verizon employees. Once the third party administrator completes its initial classification of the claimants into the appropriate tier, the Department will begin classifying the claims into three tiers of beneficiaries. We estimate that the labor intensive claims classification process will take several months and be completed by the close of summer 2011.

#### DFEH-UCI Law School Civil Rights Clinic

On March 24, 2011, an agreement to establish a Civil Rights Clinic between the DFEH and University of California, Irvine, (UCI) Law School was finalized by the parties and approved by the Department of General Services.

- The DFEH will partner with the UCI Foundation to develop a campus civil rights summer internship program on intake, investigation, prosecution, litigation, settlement, claims processing and resolution of civil rights class/group and individual complaints, in which UCI law students will work under the supervision of the DFEH Chief of Enforcement, Special Investigations Unit (SIU) Administrator and/or Staff Counsel.
- Six to ten UCI Law students will work up to a maximum of 40 hours for per week or any combination thereof for a total of 6,400 total hours over two years. The

students will serve under the supervision of DFEH Chief of Enforcement, SIU Administrator and/or Staff Counsel, and other DFEH Managers.

- The UCI law students will conduct independent *Verizon* claim evaluations to determine, on a case-by-case basis, whether the claimant experienced a CFRA violation and, if so, the type of violation and the appropriate level of damages. The students will gain experience in class action cases for up to 1,000 individual claimants to ensure they are properly evaluated in the *Verizon* case.
- In addition to working on the *Verizon* class action settlement, UCI law students may also work on and gain experience in other Special Investigations Unit class action investigations and/or individual DFEH civil rights investigations.
- The UCI law students may work on the UCI Law School campus and/or any office of the DFEH.